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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIABY: *mtb*

DEPUTY

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[Additional Counsel on Signature Page]

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO

PRIME EQUITY HOLDINGS, INC.,  
individually and on behalf of all others similarly  
situated,

Plaintiff,

v.

YELLOWPAGES.COM, LLC and AT&T Inc.,

Defendants.

**10CV 0798**

Case No.

**BTM WVG**

**CLASS ACTION**

**COMPLAINT FOR:**

- (1) Breach of Contract;
- (2) Breach of the Implied Covenant of Good Faith and Fair Dealing;
- (3) Violation of California Business and Professions Code § 17500 *et seq.*; and
- (4) Violation of California Business and Professions Code § 17200 *et seq.*

**DEMAND FOR JURY TRIAL**

ORIGINAL

FAXED

CR

1 Plaintiff Prime Equity Holdings, Inc. ("Plaintiff"), individually and on behalf of all others  
 2 similarly situated, by its undersigned counsel, alleges the following upon personal knowledge as  
 3 to its own acts and, as to all other allegations, upon information and belief and investigation by  
 4 counsel, which included review of publicly available documents and interviews with confidential  
 5 witnesses.

#### 6 NATURE OF THE ACTION

7 1. Plaintiff brings this class action on behalf of itself and a class of persons ("Class  
 8 Members") who purchased a set of services known as the "YP Clicks! program" from Defendant  
 9 AT&T Inc. ("AT&T") or its wholly-owned subsidiary, Yellowpages.com, LLC,  
 10 ("Yellowpages.com") (collectively, "Defendants") from January 26, 2006 through the final  
 11 disposition of this and any and all related cases (the "Class Period").

12 2. This case alleges that Defendants misrepresented to small businesses the benefits  
 13 and features of their YP Clicks advertising service and that Defendants were unable to perform  
 14 under the terms of the YP Clicks agreements.

15 3. As consumers' use of internet search engines such as Google and Yahoo to seek  
 16 products and services increased in recent years, the ability to advertise on such search engines,  
 17 and to receive top placement in searches, has become critically important for businesses. Search  
 18 engines aid advertising in two ways. First, advertisers can pay to make it more likely that their  
 19 business or product is highlighted when certain keywords are entered into the search engine. For  
 20 example, when a user types "pizza" into Google, an ad and link for "Pizza Hut" or "Dominos"  
 21 might be displayed at the top of the page. This ad will be set off from the unpaid search results,  
 22 usually through shading. The business would pay for that key term. Second, advertisers can  
 23 control the content on their websites so that their website is featured at the top of the unpaid  
 24 search result.

25 4. Advertisers pay a fee to the search engine company – Google, in the example  
 26 above – each time their ad is clicked on by internet user. Such ads are known as "pay-per-click"  
 27 ads. Advertisers – and particularly smaller businesses – have a strong incentive to display their  
 28

1 advertisements *only* to the people most likely to make a purchase after clicking on the ad. To  
 2 accomplish this, an advertiser must carefully buy keywords, geographic location terms, and any  
 3 other available features, to determine to whom their ads should be displayed. This is known in  
 4 the internet advertising industry as “targeting.”

5         5. In addition to targeted pay-per-click advertising, website operators also carefully  
 6 choose text to implant in their website to make it appear as relevant as possible to search engines.  
 7 This is designed to maximize the likelihood that the website appears at the top of the list of  
 8 results that are returned when certain search terms are entered. The art and science of  
 9 maximizing search engine results is generally known as search engine optimization (SEO), and  
 10 the combination of pay-per-click advertising and SEO will be referred to as search engine  
 11 marketing (SEM). YP Clicks! is a SEM service Defendants offer to small businesses.

12         6. As alleged in detail below, Defendants marketed YP Clicks! to businesses by  
 13 representing that YP Clicks! could target local consumers that were actively searching for  
 14 products offered by those businesses. Defendants claimed that YP Clicks! provided a “one stop”  
 15 solution for businesses wishing to advertise on the internet. Defendants claimed they had  
 16 entered into partnerships with search engines such as Google, and that by enrolling in the YP  
 17 Clicks! program, ads would be displayed on those search engines when targeted, useful search  
 18 terms relating to the business were entered.

19         7. Specifically, Defendants represented that YP Clicks! customers would receive: (1)  
 20 locally targeted, qualified traffic to their websites; (2) a guaranteed number of total clicks by the  
 21 contract end-date; and (3) targeted key phrases for the customer’s title and description text to  
 22 match website content to maximize the likelihood that customer websites will display at the top  
 23 of the results page when certain terms are input into a search engine.

24         8. Defendants’ representations were materially false and misleading for several  
 25 reasons. First, instead of purchasing “targeted” keywords to drive traffic to customers’ sites,  
 26 Defendants, through a third party, purchased generic terms (such as “pizza” in the example  
 27 above) and charged a premium price for them. Second, because the advertising was not targeted,  
 28

1 the above practice created a high number of artificial, useless “clicks” that Defendants still  
 2 counted towards the “guaranteed” amount of clicks purchased by customers. In some instances  
 3 Defendants’ own employees, or those of the third parties with whom Defendants contract for the  
 4 keywords, clicked on the links, further artificially inflating the number of clicks. When even  
 5 those measures fail to garner the guaranteed number of clicks, Defendants then offer to extend  
 6 their customers’ ad campaigns until the “guaranteed” number of clicks is reached – but still  
 7 require that Class Members pay the monthly fee during this contract time period when clicks are  
 8 not being realized. Third, Defendants’ text additions to customers’ websites do not result in  
 9 those websites appearing at the top of the results list when the agreed-upon search terms are  
 10 entered. Finally, while selling the YP Clicks! program, Defendants were fully aware that they  
 11 could not deliver the SEM services promised to and contracted for by the Class Members.

12 9. In short, YP Clicks! does not perform as advertised. The only effective  
 13 advertising connected to the YP Clicks! program was the deceptive campaign about YP Clicks!  
 14 itself, which resulted in the sale of a useless service, damaging Plaintiff and Class Members.

#### 15 JURISDICTION AND VENUE

16 10. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(d), because there are at  
 17 least 100 Class Members in the proposed Class, the combined claims of proposed Class  
 18 Members exceed \$5,000,000 exclusive of interest and costs, and at least one Class Member is a  
 19 citizen of a state other than Defendants’ state of citizenship.

20 11. Venue is proper pursuant to 28 U.S.C. § 1391(a) because a substantial part of the  
 21 events giving rise to the claims asserted herein occurred in this district, and Plaintiff dealt with  
 22 Defendants who are located in and/or do business in this district. Venue is proper pursuant to 28  
 23 U.S.C. § 1391(c) because Defendants conduct substantial business in this District, have sufficient  
 24 minimum contacts with this District, and otherwise purposely avail themselves of the markets in  
 25 this District, through the promotion, sale, and marketing of their services in this District.

**THE PARTIES**

12. Plaintiff Prime Equity Holdings, Inc. ("Prime Equity") is a mortgage corporation located in Boise, Idaho and is a member of the Class defined below. Prime Equity is owned and operated by Shanna Wroten-Tucker and Dean Tucker. During the Class Period, Prime Equity purchased Defendants' YP Clicks! program with a guaranteed 1,080 clicks for a one-year term (or about 90 clicks per a month) at a monthly rate of \$381. After paying this sum for three months, Plaintiff realized that it was receiving significantly less than 90 clicks each month and contacted Defendants. Defendants stated that if the "guaranteed" number of clicks was not reached by the contract's expiration, they would extend the contract terms, but Plaintiff would still need to pay the monthly fee during the contract term while the clicks were not being realized. Plaintiff suffered injury in fact in a manner similar to other Class Members as a result of Defendants' unfair, deceptive, and misleading practices described herein.

13. Defendant Yellowpages.com, a wholly-owned subsidiary of AT&T, is headquartered in Glendale, California. Yellowpages.com is a self-proclaimed "leading Internet Yellow Pages and search directory," and sells, markets, and operates the YP Clicks! program.

14. AT&T is a communications holding company incorporated in Delaware and headquartered in Dallas, Texas. It is the sole owner of Yellowpages.com since 2006 and, before 2006, its predecessors-in-interest were joint owners of Yellowpages.com. AT&T, through its own employees and those of Yellowpages.com, sells, markets, and operates the YP Clicks! program.

15. AT&T is the parent company of Yellowpages.com and controls Yellowpages.com. Each Defendant acted pursuant to and within the scope of the parent-subsidiary relationship, and each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and/or abetted the alleged conduct.

## DEFENDANTS' UNLAWFUL BUSINESS PRACTICES

### Defendants' False and Misleading Statements

16. The YP Clicks! program was launched on April 28, 2005, by AT&T's predecessors-in-interest, who issued a press release that same day emphasizing the purported benefits of the YP Clicks! program:

YELLOWPAGES.COM LLC, a joint venture of SBC Communications Inc. and BellSouth Corp., has contracted with TrafficLeader, a subsidiary of Marchex, to launch an advertising package designed to simplify search engine marketing for local advertisers.

The new search engine product eliminates the need for businesses to learn and navigate multiple search engines, search methods and submission standards to advertise strategically on the Internet. It also reduces risk by enabling advertisers to purchase a specified number of clicks for a flat fee.

This full-service package is being sold by SBC Yellow Pages as a SMARTpages.com bundle (SBC Search Engine Solutions) and by YELLOWPAGES.COM (YPclicks!). The search engine product offering is modeled after BellSouth's successful Real Search Engine Solutions product also powered by TrafficLeader Express.

**"Research shows that up to 30 percent of consumer searches online are for local information,"** said Myles Midgley, executive director-Internet Yellow Pages operations for SBC Directory Operations. **"We're experts in connecting local buyers with sellers,** and we're continually evolving our product offering to make sure we have the most complete solution available. Our new advertising package does just that. **When businesses combine Search Engine Solutions with their current SMARTpages.com advertising, they can reach more customers who make purchasing decisions - no matter where they are searching online."**

"Search Engine Solutions and YPclicks! are wonderful examples of how the partnership between SBC and BellSouth is enabling us to build a premier Internet Yellow Pages presence and offering for local businesses," said Charles Stubbs, CEO & president of YELLOWPAGES.COM LLC. "By introducing a common product across three companies, we are able to offer local businesses the direct benefit of this partnership and future value that we will be providing all advertisers as we move towards a single site and single platform."

"TrafficLeader Express provides BellSouth RealPages.com, and now SBC SMARTpages.com and YELLOWPAGES.COM with the ability to offer local advertisers a unique combination of search engine services that can effectively complement existing marketing programs," said John Keister, Marchex president and COO. "The platform makes it easy for advertisers to leverage the benefits of search engine marketing across a wide base of distribution."

**Once an advertiser signs up, keywords and phrases are submitted to a network of search engines to index the advertiser with a description of its business specialty. At this point the search distribution for the advertiser can be selected - based on criteria that may include business name, category and geography.**



Advertisers have a wide selection of options through a network of many of the Internet's most popular search engines. SBC SMARTpages.com offers five advertising packages and YELLOWPAGES.COM offers four packages. The packages are based on the desired volume of clicks. The advertiser indicates the number of clicks it wants to receive. If the "guaranteed" clicks are not received during the regular contract term, the advertiser's contract is extended.

"With our search engine product, we've removed the risk and complexity for the advertiser. *The fee is flat and the advertiser is assured of the exposure to consumers,*" said Midgley. "This offering is a perfect complement to traditional Yellow Pages advertising and demonstrates how both print and online Yellow Pages are a perfect link between buyer and seller."

(Emphasis added).

17. Defendants' advertisements for YP Clicks! during the Class Period further boasted the program's purported benefits. For example, one advertisement that appeared on Yellowpages.com during the Class Period stated, in its entirety:

YP.COM has developed a **One-Stop-Shop** for all your search engine solutions. Let us do the work for you, and see how easy it is to **drive traffic to your website.**

**One-Stop-Shop for Search Engine Solutions**

- ▶ Locally targeted, qualified traffic to your website
- ▶ Guaranteed number of total click-through's by contract end-date
- ▶ Text ad submission to our core network of search engines for the life of your contract
- ▶ Monthly e-mail reports and one fixed rate on your bill
- ▶ Targeted key phrases for your title and description text to match your website content and meet search engine guidelines

**YPclicks! Search Engine Solutions**

All YPclicks! search engine solutions include a guaranteed number of clicks and submission to the Search Engine Network, as specified below:<sup>1</sup>

**Options:**

- ▶ 360; 720; 1,080; 2,040; 3,300; 4,800; and 6,000 Clicks Packages - Enhance, Google and/or Yahoo!<sup>2</sup>

---

Search Packages will start within 45 days of sales order. Search Orders may be rejected if Advertiser's website is incomplete, under construction or contains pop-ups, disabled browser back button, excessive Flash, predominately foreign language, or questionable content.

<sup>1</sup> Click-through's are guaranteed to be delivered by the contract end date as solely determined by YP.COM. In order to ensure delivery of contracted results, additional search engines may be used as needed. There is never a guarantee of rank, or position within search results. The Search Engine Network is subject to change at any time. Please check with your Sales Representative.

<sup>2</sup> Networks vary by package size.

(All emphasis in original).

18. Defendants' sales force has been trained uniformly to adhere strictly to presentations making the above representations in soliciting business. Whether in person or over the phone, Defendants' salespeople were, as a condition of their employment, required to represent to potential customers that YP Clicks! will result in an increase of "locally targeted, qualified traffic" to the customer's website, and that YP Clicks! can put businesses in a "dominant position" in results on its "extended distribution partner" search engines.<sup>1</sup> This information is provided in a script that each of Defendants' sales staff is required to follow in order to work for Defendants.

19. YP Clicks! charged a premium for these services, because it was purportedly (1) providing customers with "premium" – *i.e.*, highly targeted – keywords, (2) putting customers' websites at the "top" of search engine results, and (3) "guaranteeing" a certain number of meaningful clicks.

**Defendants' False and Misleading Statements Are Corroborated by Confidential Witnesses**

20. Defendants' representations were and are false and misleading for three primary reasons. First, instead of purchasing "targeted" keywords to drive traffic to customers' sites, Defendants, through a third party, purchased generic terms (such as "pizza" in the example above) and charged a premium price for them. Second, because the advertising was not targeted, Defendants' practice created a high number of artificial, useless "clicks" that Defendants still counted towards the "guaranteed" amount of clicks purchased by customers. In some instances Defendants' own employees, or those of the third parties with whom Defendants contract for the keywords, clicked on the links, further artificially inflating the number of clicks. When even those measures failed to garner the guaranteed number of clicks, Defendants offered to extend their customers' ad campaigns until the "guaranteed" number of clicks was reached – but still

<sup>1</sup>"Extended distribution partners" refers to popular search engines such as Yahoo!, Alta Vista, and Google, among others.



1 required Class Members pay the monthly fee during this contract time period while clicks are not  
 2 being realized. Third, Defendants' text additions to customers' websites did not result in those  
 3 websites appearing at the top of the results list when the agreed-upon search terms are entered.  
 4 Finally, while selling the YP Clicks! program, Defendants were fully aware that they could not  
 5 deliver the SEM services promised to and contracted for by the Class Members.

6 21. Defendants' unfair, deceptive and unlawful sales practices are exacerbated by the  
 7 very "contract" by which they claim to bind their customers. That contract is confusing, not in  
 8 conformance with the representations made by Defendants' salespeople, and uniformly withheld  
 9 from Defendants' customers until *after* they have "agreed" to the materially different terms  
 10 negotiated by Defendants' salespeople.

11 22. These allegations are confirmed by confidential witnesses contacted by Plaintiff's  
 12 counsel. Confidential Witness 1 ("CW1") was a sales account manager for Defendant AT&T  
 13 from January to December of 2009. CW1 sold the YP Clicks! program, but resigned because  
 14 CW1 perceived, based on his experiences with the program, that the program hurt small  
 15 businesses. CW1 believed, based on CW1's first hand experience and evidence CW1 had seen,  
 16 that the YP Clicks! program did not deliver as advertised. For instance, CW1 stated that YP  
 17 Clicks!' keywords – that is, the words that cause a business's ad to appear on a website – are  
 18 purchased in bulk by a third party, Marchex, which does not, in its turn, buy "targeted" or  
 19 "premium" keywords from the search engine company. Rather, Marchex buys only generic  
 20 keywords that result in a business's ads being displayed to – and therefore clicked on by – a  
 21 largely irrelevant portion of consumers. For example, Defendants may purchase the right to  
 22 display ads on Google or Yahoo! every time a user searches for the word "car" or "pizza." Then,  
 23 despite Defendants' representations that ads would be displayed only when more targeted and  
 24 specific words are used, customers' ads are instead displayed when these generic terms are  
 25 searched, artificially inflating the number of clicks reported to customers and resulting in  
 26 precisely the useless contacts YP Clicks! was supposed to avoid. CW1 stated that some of the  
 27 clicks on customers' website in fact came from AT&T or Marchex employees themselves.  
 28

23. Worse, when salespeople, including CW1, complained to AT&T's management about customer complaints about the uselessness of the YP Clicks! product, they were told to simply avoid customers who were complaining to them, and to focus their efforts on selling to other customers. CW1 stated that s/he saw emails from AT&T's corporate management explaining the best way to avoid or stonewall dissatisfied customers.

24. CW2 was an Advertising Sales Manager for AT&T from June 2008 to September 2009. CW2 stated that s/he would reach agreements with customers on the keywords that should be purchased on their behalf but, when CW2 investigated further, s/he concluded that despite the terms CW2 agreed to purchase for the customer, Defendants bought more generic terms, while still charging the higher prices typically associated with more targeted advertising. CW2 explained that this was not useful for customers. As CW2 learned more information about what was occurring, CW2 concluded that YP Clicks! did not work as advertised, and that s/he had been trained and instructed by Defendants to mislead potential customers. CW2 consequently resigned.

25. CW3 was an Internet Advertising Account Executive for Defendant AT&T from mid-2006 to November of 2008. CW3 stated that, based on the technology used by the YP Clicks! program (as opposed to other, similar programs with which CW3 was familiar), CW3 found it unlikely that AT&T could provide reliable data regarding clicks to YP Clicks! customers. CW3 further stated that s/he did not believe that the YP Clicks! program could deliver what Defendants promised.

#### CLASS ALLEGATIONS

26. Plaintiff brings this action on its own behalf and as a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks certification of the following Class:

All persons in the United States who purchased the YP Clicks! program service from January 26, 2006 through the final disposition of this and any and all related actions.

1           27. Plaintiff and the members of the Class are so numerous that joinder of all  
2 members individually, in one action or otherwise, is impractical.

3           28. This action involves questions of law and fact common to Plaintiff and all  
4 members of the Class which include:

5                   (a) Whether Defendants breached their contracts with Plaintiff and the Class  
6 Members;

7                   (b) Whether Defendants breached the implied covenant of good faith and fair  
8 dealing;

9                   (c) Whether Defendants violated California Business and Professions Code  
10 Section 17500;

11                   (d) Whether Defendants violated California Business and Professions Code  
12 Section 17200; and

13                   (e) Whether Plaintiff and Class Members sustained damages resulting from  
14 Defendants' conduct and, if so, the proper measure of damages, restitution, equitable or other  
15 relief, and the amount and nature of such relief.

16           29. Plaintiff understands and is willing to undertake the responsibilities of acting in a  
17 representative capacity on behalf of the proposed Class. Plaintiff will fairly and adequately  
18 protect the interests of the Class and has no interests adverse to or which directly conflict with  
19 the interests of the other members of the Class.

20           30. Plaintiff has engaged the services of counsel, who are experienced in complex  
21 class litigation, who will adequately prosecute this action, and will assert and protect the rights of  
22 and otherwise represent Plaintiff and the absent Class Members.

23           31. Plaintiff's claims are typical of those of the absent Class Members because  
24 Plaintiff and the Class Members each sustained damages arising from Defendants' wrongful  
25 conduct, as alleged more fully herein.

26           32. This action is brought under Rule 23 because Defendants have acted on grounds  
27 generally applicable to all members of the Class.  
28

33. Judicial determination of the common legal and factual issues essential to this case would be far more efficient and economical as a class action than piecemeal individual determinations.

34. Plaintiff knows of no difficulty that will be encountered in the management of this litigation which would preclude its maintenance as a class action.

### COUNT I Breach of Contract

35. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

36. Plaintiff and Class Members entered into contracts with Defendants for services under Defendants' YP Clicks! program.

37. Plaintiff and the Class Members performed their part of those agreements by paying for the YP Clicks! program, or are excused from performance because of Defendants' non-performance as alleged herein.

38. Defendants did not perform in accordance with the terms of any contract that exists between them and Plaintiff and the Class Members, by among other things:

- (a) failing to deliver the agreed-upon number of "guaranteed" clicks;
- (b) purchasing generic and virtually useless keywords instead of the more targeted keywords that Plaintiffs and the Class bargained for; and
- (c) failing to ensure that Plaintiffs and Class Members' websites appear at the top of search engine results as agreed upon.

39. As a direct and proximate result of Defendants' breach of these material terms, Plaintiff and the Class Members did not receive the benefit of their bargain and were damaged, in an amount to be determined at trial.

### COUNT II Breach of the Implied Covenant of Good Faith and Fair Dealing

40. Plaintiff incorporates the above allegations by reference as though fully set forth herein.

(a) failing to make good faith efforts to deliver the agreed-upon number of “guaranteed” clicks;

(c) failing to make good faith efforts to ensure that Plaintiffs and Class Members' websites appear at the top of search engine results as agreed upon.

**COUNT III**  
**Violation of California Business and Professions Code § 17500 *et seq.***

45. Throughout the Class Period, Defendants engaged in a public advertising and marketing campaign and offered for sale the YP Clicks! program on a nationwide basis, including in California.

46. Defendants engaged in their advertising and marketing with an intent to directly or indirectly induce the purchase of the services constituting the YP Clicks! program. Defendants likewise actively concealed their knowledge that the YP Clicks! program did not deliver the services promised by their advertising and salespeople, including that the keywords

1 promised were often not delivered, that the number of clicks "guaranteed" during the life of the  
 2 contracts were not delivered, that many of the clicks on customers' advertisements were from  
 3 other generic keywords or from Defendants' own employees, and that customers' websites were  
 4 often not displayed at the top of the relevant search results.

5 47. Defendants' advertisements and marketing representations are false, misleading,  
 6 and likely to deceive the public and/or deceived the public by falsely representing the  
 7 characteristics and/or benefits of the YP Clicks! program, as detailed above.

8 48. In making and disseminating the statements alleged herein, Defendants knew or  
 9 should have known that the statements were untrue or misleading, and acted in violation of  
 10 California Business and Professions Code Section 17500, *et seq.*

11 49. Plaintiff and Class Members seek restitution, declaratory and injunctive relief, and  
 12 other relief allowable under Section 17500, *et seq.*

13 **COUNT IV**  
 14 **Violation of California Business and Professions Code § 17200 *et seq.***

15 50. Plaintiff incorporates the above allegations by reference as though fully set forth  
 16 herein.

17 51. The circumstances giving rise to Plaintiff's and Class Members' allegations,  
 18 including the corporate policies regarding the sales, marketing, and implementation of the YP  
 19 Clicks! program, occurred in the State of California. Additionally, Defendant Yellowpages.com  
 20 LLC maintains its corporate headquarters in Glendale, California. Accordingly, application of  
 21 California law is appropriate.

22 52. By engaging in the acts and practices described above, Defendants committed one  
 23 or more acts of "unfair competition" within the meaning of Business & Professions Code §  
 24 17200. "Unfair competition" is defined to include any "unlawful, unfair or fraudulent business  
 25 act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by  
 26 [Business & Professions Code § 17500 *et seq.*]."



53. Defendant committed "unlawful" business act or practices by, among other things, engaging in false advertising in violation of Business & Professions Code § 17500, breaching their contracts with Plaintiff and Class Members, and/or breaching the implied covenant of good faith and fair dealing.

54. Defendants committed "unfair" business act or practices by, among other things:

(a) engaging in conduct where the utility of such conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and Class members;

(b) engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and Class Members; and

(c) engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws alleged in this Complaint.

55. Defendants committed "fraudulent" business act or practices by, among other things, engaging in conduct Defendants knew or should have known were likely to and did deceive the public, including Plaintiff and other Class Members.

56. As detailed above, Defendants' unlawful and unfair practices include, but are not limited to, the following:

(a) promoting, marketing, and selling Search Engine Optimization services, without intent to provide them as advertised;

(b) omitting to state to Plaintiff and Class Members that third party Marchex purchased generic keywords rather than premium keywords;

(c) omitting to state to Plaintiff and Class Members that Defendants' Search Engine Optimization features were unable to cause Class Members' pages to be displayed at the top of search engine results;

(d) omitting to state to Plaintiff and Class Members that clicks were only "guaranteed" to be delivered during the duration of the contract if Defendants could extend that contract indefinitely while still billing monthly; and

(e) charging and collecting premiums for these so-called "services."

## **PRAYER FOR RELIEF**

A. An order certifying this case as a class action and appointing Plaintiff and their counsel to represent the Class Members;

**C. Actual damages for injuries suffered by Plaintiff and the Class Members;**

**E. Reasonable attorneys' fees and the costs of this action;**

F. Statutory pre-judgment interest; and

**G. Such other relief as this Court may deem just and proper.**

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

DATED: April 15, 2010

**MILBERG LLP**  
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JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

PRIME EQUITY HOLDINGS INC., individually and all others similarly situated.

(b) County of Residence of First Listed Plaintiff Boise, Idaho  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Jeff S. Westerman, Milberg LLP, 1 California Plaza, 300 S. Grand Avenue, Ste 3900, Los Angeles, CA 90071

## DEFENDANTS

YELLOWPAGES.COM, LLC

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Richard Max Valdez, Sandler Lasry Laube Byer and Valdez  
402 West Broadway San Diego, CA 92101-3542

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF                                     |                                       | DEF                        |                                       | PTF   |                                       | DEF                        |                                       |
|---|---------------------------------------|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|---------------------------------------|
| <input type="checkbox"/> 1              | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 4                                    | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of This State                   |                                       |                            |                                       | Incorporated or Principal Place of Business in This State     |                                       |                            |                                       |
| <input type="checkbox"/> 2              | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | <input type="checkbox"/> 5                                    | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen of Another State                |                                       |                            |                                       | Incorporated and Principal Place of Business in Another State |                                       |                            |                                       |
| <input type="checkbox"/> 3              | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 6                                    | <input checked="" type="checkbox"/> 6 | <input type="checkbox"/> 6 | <input checked="" type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country |                                       |                            |                                       | Foreign Nation  |                                       |                            |                                       |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

- |   |  |  |   |  |  |
|---|--|--|---|--|--|
| <input checked="" type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 30 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input checked="" type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 362 Personal Injury - Med. Malpractice<br><input type="checkbox"/> 365 Personal Injury - Product Liability<br><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability<br><b>PERSONAL PROPERTY</b><br><input type="checkbox"/> 370 Other Fraud<br><input type="checkbox"/> 371 Truth in Lending<br><input type="checkbox"/> 380 Other Personal Property Damage<br><input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs.<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other<br><b>LABOR/EMPLOYMENT</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 463 Habeas Corpus - Alien Detainee<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><b>PROPERLY BRINGS</b><br><input type="checkbox"/> 820 Copyrights<br><input type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><b>NOT A U.S. COURT CASE</b><br><input type="checkbox"/> 861 HIA (1395f)<br><input type="checkbox"/> 862 Black Lung (923)<br><input type="checkbox"/> 863 DIWC/DIWW (405(g))<br><input type="checkbox"/> 864 SSID Title XVI<br><input type="checkbox"/> 865 RSI (405(g))<br><b>EXEMPT FROM PAYMENT OF FEES</b><br><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)<br><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><input type="checkbox"/> 950 Constitutionality of State Statutes |
|---|--|--|---|--|--|

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332 (Class Action Fairness Act)

Brief description of cause:

Complaint for Violation of the California Business and Professions Code

## VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE John A. Houston

DOCKET NUMBER 10-CV-0195 JAH

DATE

04/15/2010

SIGNATURE OF ATTORNEY OF RECORD

Jeff S. Westerman

FOR OFFICE USE ONLY

RECEIPT #

12331

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

TD at 15-10

CR

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS012331  
Cashier ID: mbain  
Transaction Date: 04/15/2010  
Payer Name: SAN DIEGO LEGAL SUPPORT SVCS

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CIVIL FILING FEE  
For: PRIME EQUITY V YELLOWPAGES.COM  
Case/Party: D-CAS-3-10-CV-000798-001  
Amount: \$350.00  
-----

CHECK  
Check/Money Order Num: 88578  
Amt Tendered: \$350.00  
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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.